

Court of Appeals, State of Michigan**AMENDED ORDER**

People of MI v Timothy Malcolm Toje

Docket No. 271517

LC No. 03-005726-01

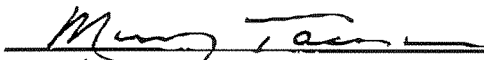
Michael J. Talbot
Presiding Judge

Michael R. Smolenski

Patrick M. Meter
Judges

The Court orders that the motion to waive fees is GRANTED for this case only.

In lieu of granting the delayed application for leave to appeal, the Court orders that the conviction for second-degree criminal sexual conduct, MCL 750.520c(1)(a), is VACATED and the matter is REMANDED for resentencing on count I for fourth-degree criminal sexual conduct, MCL 750.520e(1)(a). There is no evidence on the record that there was any sexual contact with complainant when she was under 13 years of age. The complainant was age 15 at the time of the offense and the evidence supported a conviction for fourth-degree criminal sexual conduct. Defendant's sentence on count II for third-degree criminal sexual conduct is not affected by this correction. We do not retain jurisdiction.


Presiding Judge



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAY 21 2007

Date


Chief Clerk